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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

MAKBOUL AHMAD MAKBOUL,

Defendant and Appellant.

E074116

(Super.Ct.No. BAF1701223)

OPINION

APPEAL from the Superior Court of Riverside County. Jorje C. Hernandez,
Judge. Affirmed.

Anthony J. Dain, under appointment by the Court of Appeal, for Defendant and
Appellant.

No appearance for Plaintiff and Respondent.

On remand from our nonpublished opinion in *People v. Makboul* (May 13, 2019,
E070133), the trial court declined to exercise its discretion to strike defendant and
appellant's, Makboul Ahmad Makboul, prior serious felony conviction enhancement.

After defense counsel filed a notice of appeal, this court appointed counsel to represent him. Counsel has filed a brief under the authority of *People v. Wende* (1979) 25 Cal.3d 436 and *Anders v. California* (1967) 386 U.S. 738, setting forth a statement of the facts, a statement of the case, and one potentially arguable issue: whether the court abused its discretion in denying defendant's request that it strike his prior serious felony conviction enhancement. We affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND¹

"The victim testified she began dating defendant in November 2015. She first ended the relationship in April 2016. Defendant told her that relationships with him do not end until he ends them. Defendant began text messaging and calling her approximately 20 times daily.

"Thereafter, defendant started driving by the victim's work daily; he threatened a coworker with whom the victim carpooled. He yelled to the coworker: "'I'm going to kill you, 'F-ing [N-word].'" He told the victim 'that if he caught the bitch in the car with [her] that he would yank . . . her out of the car' The victim was scared for both herself and her coworker. The victim's employer eventually terminated her employment due to defendant's frequent 'visits.'

"Defendant also came to the victim's house '[j]ust about every single morning' between April and May. He would start beating on the door as early as 3:20 a.m. It scared the victim.

¹ We rely on our previous opinion in *People v. Makboul*, *supra*, E070133, for some of our factual recitation.

“The victim eventually informed defendant’s parole officer regarding defendant’s behavior. Defendant incurred a parole violation due to this behavior. Defendant was incarcerated for approximately 10 days. While he was incarcerated, most of the aforementioned behavior stopped; however, defendant still called her from jail.

“Once defendant was released, the victim rekindled their relationship. Defendant told her that if he became incarcerated again due to her actions he would “‘snap [her] neck.’” During this period, he twice brought a gun to her house. When asked if she was scared, the victim testified: ‘Not really. But, then again, yes, I was because he had just got out of jail. He was angry that he was in jail. He said that the inmates that he was in custody with said that they would take their wives or their girlfriends and send them to [her] house to do something to [her].’ ‘That scared me.’ She believed that if she ever called the police he would snap her neck.

“In August, she ended the relationship again. Defendant started texting and calling at all hours of the night. Defendant came over to her house 10 to 15 times daily; he would bang on the doors and windows asking to be let in. The victim’s neighbor testified he saw and heard defendant yelling and banging on the victim’s window. Defendant climbed on an adjacent trailer trying to look inside the victim’s windows.

“The victim testified defendant said he was going to ‘break out [her] windows and bust all [her] windows and come in and see what was going on’ ‘I got pretty scared.’ He would call her and comment on what she was doing and wearing while inside her home.

“Defendant’s behavior continued until he became incarcerated in September after the victim called the police. She obtained a restraining order against defendant at the suggestion of an officer. Women started calling the victim telling her they had messages from defendant. She told them to stop calling.

“Once defendant was released from custody in late October, he started driving through her mobilehome park honking his horn. He blocked her car with his vehicle on one occasion. The victim’s neighbor saw defendant driving through the mobilehome park two or three times weekly. She started receiving “[a] lot” of phone calls again. On November 2, she went to the store; defendant came into the store and asked her to buy him gas and cigarettes. He had parked his car in front of hers.

“The next day defendant kept driving through the victim’s mobilehome park. She received phone calls and text messages from defendant. She called the police. She answered one of the phone calls while the responding officer was there. Officers thereafter took defendant into custody.

“Defendant subsequently, repeatedly contacted the victim’s employer’s assistant attempting to have the restraining order dropped while defendant was incarcerated. The victim remained scared and feared for her safety.” (*People v. Makboul, supra*, E070133.)

Pursuant to a negotiated plea, defendant pled guilty to stalking (Pen. Code, § 646.9, subd. (c)(2), count 1),² violating a protective order (§ 273.6, subd. (a), count 2), and making criminal threats (§ 422, count 3). Defendant additionally admitted suffering

² All further statutory references are to the Penal Code unless otherwise indicated.

a prior strike conviction (§ 667, subds. (c), (e)(2)(A)) and a prior serious felony conviction (§ 667, subd. (a)). Pursuant to the plea agreement, the court sentenced defendant to an aggregate term of 10 years four months of incarceration, including a consecutive five-year term on the prior serious felony conviction enhancement.

On remand from this court, the trial court held a hearing at which defendant was present and represented by counsel. The court noted: “We did have a brief chambers conference this morning and I indicated to the parties that I thought that what my role was today was to put myself back on the date of sentencing and ask myself the question of whether I would have interjected myself into the negotiated disposition between the parties and whether on that date I would have exercised my newfound discretion not to impose the five-year prior.”

The court declined to exercise its discretion to strike the enhancement based on the following reasoning: “And my review of the facts today, there’s nothing that would have caused me to interject myself in that plea negotiation. And there’s nothing that would have given rise to my exercise of this newfound discretion to strike the punishment of the” section 667, subdivision (a) enhancement. “I think that based on the facts and circumstances of the case, it was a righteous disposition.” “And so there’s nothing then and nothing now which would have caused me to interject myself and say, Hey, if you plead guilty to the Court, I would exercise this discretion and not impose the five-year prior. I thought it was a righteous disposition.” “I would not have interjected myself in any way, shape, or form in this plea negotiation.” “If the defendant pled guilty to me today, I would not exercise . . . that [section] 1385 discretion on that [enhancement]. I

wouldn't have done it then, and I wouldn't do it today based upon my knowledge of the facts."

II. DISCUSSION

We offered defendant an opportunity to file a personal supplemental brief, which he has not done. Pursuant to the mandate of *People v. Kelly* (2006) 40 Cal.4th 106, we have independently reviewed the record for potential error and find no arguable issues.

III. DISPOSITION

The judgment is affirmed.

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McKINSTER
Acting P. J.

We concur:

MILLER
J.

RAPHAEL
J.